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~ A News Commentary ~

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Gonzales, Ex Post Facto ~
\ **The Rise of Partisan Law**

The proceedings to confirm Alberto Gonzales as Attorney General started out as routine. On appearances, pundits thought this appointee far less polarizing than John Ashcroft was four years ago – then it got contentious. Because of his history, and what he revealed *and* concealed in the hearings, murmurs of doubt grew to a public furor... rightly so.

Unlike most nominees, the Senate needed to look at this man's very fitness for the job. Seemingly he is not capable of acting true to the law, or above political expediency.

He came up as a Texas counsel & judge in the patronage politics of the Bush cabal: A veritable 'poster child' of crony jurisprudence, he enacted their 'tough-on-crime' precepts and stridently punitive agenda, and lent legitimacy to their double standards.

He was a major force in that State's accelerated executions, some of contested legality, and also its leniency on Enron & other favored corporations.

His role as White House Counsel went beyond legal conjecture and client advice: He wrote the key legal memos used by the Administration to vindicate prisoner abuse and torture, suspend *habeas corpus* protections, and implement such policies on a fast-track.

In so doing he advocated direct breaches of U.S. and International laws, devised ways to circumvent them, and expedited actual practices in violation.

The outrages of Abu Graib and Guantanamo go beyond the maltreatment of detainees: The Bush regime asserts new executive powers to change the rules, deny basic rights, and conduct torture – and Gonzales is the prevaricator for their actions above the law.

As always such actions are advanced as necessities of National Security and our protection. But where they were condoned in the past only as exceptional interim measures, now in a self-perpetual hysteria over terrorism, on a permanent war footing, *they are the rule.*

As always the authorities of Federal agencies, courts, & police are expanded, and rights lost. But where previously some burdens of proof, transparency, and prior law were upheld, the Gonzales Doctrine claims overarching powers of enforcement and deadly interdiction upon an *allegation of suspicion* alone. Policy and factual grounds are concealed in investigative secrecy, preempting all legal limits and accountability.

As always these actions are sold as essential to defend our Flag and our Freedoms. On the contrary, this is the embellished logic of imperial control, bent on legal sanction to attack perceived enemies or dissent at will, and to deny fair redress as a matter of course. In the long run, it's a move to rig the system and alter the foundations of American civics and law.

Astonishingly, Gonzales rides "conservative" credentials as a jurist, while his career has really betrayed the values and liberty interests of true conservatives.

But this is 'NeoCon Law' – no longer about individual rights and limited government: In their actions, briefs, and rulings, its practitioners have always supported maximum powers of state. In the pale of Nixon, for 30 years they have persistently attacked personal privacy, expression, and due process, and pushed government beyond Constitutional bounds.

~ In the 1980's they cranked up the Drug War, using 'crimes of possession' to wedge 4th Amendment protections on search, seizure, and probable cause. Meanwhile Reagan operatives lied and defied Congress, sending arms to Iran and insurgent terror to Central America.

~ Bush Sr. had three terms in DC to pack federal agencies with GOP protegés, building a partisan infrastructure & culture of authority. He quietly enacted sweeping FEMA police powers by Executive Order in 1991, then launched a clamorous show of force in the first Iraq War.

~ In the Clinton era, zealot federal agents ran amok at Ruby Ridge and Waco, and got away with it. Republicans kept jamming judicial appointments, and the Democrats finally figured out how they had been stacking the courts for years on political litmus tests.

Now Bush Jr. plays the high hand for true believers, vowing to kill terrorists and legislate morals – as Gonzales makes up rationales for power, not "hypothetically" anymore, but still wrong. John Mitchell invoked much the same 'sovereign immunity' arguments in 1969-70 to justify Nixon's wiretaps against dissidents – claims which the Supreme Court unanimously disdained as archaic and a threat to democracy. United States v. United States District Court, 407 U.S. 297 (1972)

So Gonzales was confirmed anyway, another low for the U.S. Senate, really absurd. On the record he espoused medieval law, while calling the Geneva Conventions " quaint". Democrats raised some points of concern, but didn't connect the dots. Republicans accused them of "partisan politics", yet fronted this ultimate spawn of judicial patronage. On both sides, it was a failure of scrutiny on legal ethics & conduct, in a roomful of lawyers who should know:

- It is not a matter of *speculation* that Gonzales might break the law for political purposes... *he has already done so under color of executive powers, with clear intent.*
- There is no *vague concern* over his legal knowledge and objectivity in public interests... *his record is a litany of judicial errors & curtailed rights, driven by ideology.*

In the prospect of this Attorney General's tenure, there is cause to be wary and watchful.

As Bush persists in transnational terror wars, the climate of endangerment builds... With ongoing interdiction tactics, extreme practices on detainees will continue under military control, veiled from Congress. As federal security agencies are "reorganized", legal boundaries of intelligence & enforcement will be more blurred, due process made discretionary. With a huge domestic surveillance apparatus, they will push prosecutions of 'subversives' to criminalize dissent. It was no accident that 1800 people were arrested in New York during the Republican Convention.

Bush has also called for a Constitutional Amendment to ban gay marriage... The Justice Department will have to subvert separations of Church and State to justify this, and devise new criminal offenses to enforce it. Of course the Constitution forbids such tampering with private lives, creeds, associations, and equal protection... and ultimately the 9th Amendment preserves the "*rights... retained by the people*" beyond Government reach, where it must never go – but Gonzales does not grasp these sacred bounds. The rhetoric reveals a dark irony:

On Karl Rove's cue, Republicans rail against "activist judges" allowing gay unions, yet those rulings are models of *judicial restraint* – keeping government small, affirming personal & civil rights it has no power to deny. In fact the NeoCons are the real 'activists', making government bigger by expanding its powers. As always, *say one thing, do another...* but this is a high-stakes deception.

At risk is the very idea of public law, in its limits and the balance of interests it serves. In their hands it is an instrument of coercion, used to benefit narrow interests and impose their biases, mandates, and wars on the public. Alberto Gonzales has been a prime source of pseudo-legalisms in this agenda, an archetype of partisan law. His rise is most signatory of its hypocrisy.